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Mailing Data: December 2, 2008

NOTICE OF REASONS FOR REJECTION

Patent Application Number: No. 2000-533782
Drafting Date: November 21, 2008
Patent Examiner: Munehiko Higuchi 9118 2W00
Patent Attorney : Takehiko Saito and one other
Article Applied: Article 29, paragraphs 1 and 2,
Article 37 and Article 36 of the Patent Law

It is deemed that this application should be rejected for the following reason(s). Any argument if any, should be submitted in writing within three months from the mailing date of this notice.

REASON

<Reason 1>

The inventions of the remarks below, as described in this application, do not satisfy the requirement as stipulated in the Article 37 of the Patent Law.

Remarks

As shown in the Reason 2 as mentioned hereunder, the invention as defined by the claim 1 does not have novelty.

Accordingly, among the inventions as defined by the claims 1 to 20, neither a new common technical feature corresponding to a problem to be solved by the present invention nor a technical problem to be solved by the invention which has been unresolved up to the filing date of the present invention, is defined.

Therefore, there is no relationship as stipulated by the Article 37, sections 1 and 2 of the Patent Law between the invention as defined by the claim 1 and the inventions as defined

by the other claims.

Further, it is also apparent that these inventions do not have any one of relationships as stipulated by the Article 37, sections 3 to 5 of the Patent Law.

Since the present application violates the rule of Article 37 of the Patent Law, generally speaking, the inventions as defined by the claims 2 to 20 should not be examined except for examining about the requirement of the unity of invention.

However, in this application, since it was determined to be effective that the inventions as defined by the claim 2 to 5 should be examined simultaneously with the examination for the invention as defined by the claim 1, the inventions as defined by the claims 1 to 5 have been examined with respect to the requirements concerning novelty and inventive step.

<Reason 2>

The inventions described in the following claims, of the remarks below, are the ones which are described in the publications of the remarks below or distributed domestically or abroad, prior to the filing of the patent application, therefore are unpatentable under the provision of Article 29, paragraph 1, section 3 of the Patent Law.

<Reason 3>

The inventions described in the following claims, of the remarks below, are ones which could easily have been made by a person with ordinary skill in the art to which the invention pertains, on the basis of the inventions described in the publications of the remarks below or distributed domestically, prior to the filing of the patent application, therefore are unpatentable under the provision of Article 29, paragraph 2 of the Patent Law.

Remarks (For cited references, see a List of Cited References)

Claims 1 to 5

Cited reference No. 1

Reasons 2 and 3

The cited reference No. 1 discloses a confocal microscopy system which is provided with a polychromatic source 10, the optical fibers 13, 18, a pin hole 19, an image optics 21 including a lens.

And the confocal microscopy system cited as shown in the cited reference No. 1 is further provided with a confocal probe which images the spectrum of the optical source on a line AB (22) along the Z direction and further images a reflected light thereof at a pin hole 19, and which puts the imaged reflected light into a disperser 26 via the optical fibers 18, 23 as an incident light and detects the spectrum thereof by irradiating a photo-electric elements array 27 and with a mechanism 30 which can move the probe to rotate or to slide in multiple directions including Z direction and a direction perpendicular to the Z direction so that a distribution of reflectance of a multi layered surfaces can be simultaneously obtained.
(especially see page 2, lines 12, 13 and 31 to 36)

Therefore, no specific technical difference can be found between the present inventions as defined by the claims 1 to 5 and that of the cited reference No. 1.

Claims 1 and 5

Cited reference No. 2

Reasons 2 and 3

The cited reference No. 2 discloses an invention related to a confocal microscopy which is provided with two light source

beams each having respective color being different from each other, and the respective optical axis thereof being offset from each other and wherein the light sources irradiate the spectrum on a surface of an object with the spectrum being scanned by a scanning means in a direction in parallelism with a surface of the object and then a reflected light thereof is carried out spectrum to obtain an image of the object.

Therefore, no specific technical difference can be found between the present inventions as defined by the claims 1 and 5 and that of the cited reference No. 2.

Claims 1 to 5

Cited reference No. 3

Reasons 2 and 3

The cited reference No. 3 discloses an invention related to a confocal microscopy system in which a light of a light source is transmitted via an optical fiber and a divergent light emitted from the light source is irradiated on an object as a linear spectrum extending a direction parallel to an optical axis direction or a direction perpendicular thereto by utilizing an image lens or holographic cylindrical lens, and further wherein said reflected light is again guided to the spectrograph via the lenses, the light source and the optical fiber, and finally an image of the object is obtained by detecting the spectrum obtained by the spectrograph with an array sensor.

And further, to scan and to detect the light in an optional direction with respect to the object is well-known due to an flexibility of the optical fiber.

Therefore, no specific technical difference can be found between the present inventions as defined by the claims 1 to 5 and that of the cited reference No. 3.

A List of the Cited References

- (1) French Patent Publication No. 2738343
- (2) JPP' 5-509417
- (3) JPP' 60-73405

<Reason 4>

The descriptions of the claims of the present application, of the remarks below, do not comply with the requirements according to the provision of Article 36, Paragraph 6, Section 2 of the Japanese Patent Law in the following remarks.

Remarks

(1) Since the description in claim 4 is functionally, a technical feature of the invention as corresponding apparatus is unclear.

Does this invention include an embodiment which can be driven by a manual force?

(2) In claim 5, it is not clear which means as defined by the claim 1 is denoted by the phrase "said means for moving said spectrum".

(3) In claim 5, since the phrase "means for moving an image plane" is written functionally, a technical feature of the invention as corresponding apparatus is unclear.

Does this invention include an embodiment which can be driven by a manual force?

Accordingly, the inventions as defined by the claims 1 to 5 are indefinite.

Our comments or recommendation on the Office Action
(186319/JP-475387-00121)

(1) As you can see from the enclosed translation of the Notice of Reason for Rejection, the Examiner in charge of this case has objected to the currently filed claims 1 to 20, under the Article 37 of the Patent Law as these currently filed claims being lack of unity of invention (as the Reason 1).

And he has rejected the currently filed claims 1 to 5 under the Article 29, paragraph 1, section 3, of the Patent Law, as being identical to the invention as shown in the cited references No. 1 to No. 3 (as Reason 2).

Further, he has rejected the currently filed claims 1 to 5, under the Article 29, paragraph 2, of the Patent Law, as being obvious to a person skilled in this art from the cited references No. 1 to No. 3 (as Reason 3).

In addition thereto, he has finally objected to the currently filed claim 4 and 5 under Article 36, paragraph 6, section 2, as these inventions are indefinite. (as Reason 4)

(2) Regarding the currently filed claims:

Please note that the currently filed claims substantially comprise with the claims 1 to 10 as indicated in the International Publication No. WO99/44089.

(3) Regarding the cited references:

Regarding the cited reference No. 2, we herewith enclose a copy of WO92/01966 which corresponds to the cited reference

No. 2, for your reference.

Regarding the cited reference No. 3, we herewith enclose a copy of USP No.4,585,349 which corresponds to the cited reference No. 3, for your reference.

Therefore, please review them.

(4) Regarding the reasons 2 and 3:

We reviewed the cited references and the present inventions, and think that the invention as defined by the currently filed claim 1 seemed to be broad so as to include therein the inventions as shown in the cited references.

Accordingly, in order to overcome these rejections, we have to make some amendments to the currently filed claim 1 so as to clarify the technical feature of the present invention from those as shown in the cited references.

Therefore, we would like to ask you to review the claims other than the claims 1 to 5, which have not been examined in this Office Action, and to consider whether or not there exists some claims which including one or some sophisticated technical features not shown in the cited references and which can be added to the currently filed claim 1 as an amendment.

(5) Regarding the Reason 1:

We think that this reason of rejection would be resolved when we can make an amendment to the currently filed claim 1 along the lines as mentioned above in the section (4).

(6) Regarding the Reason 4:

(a) Regarding the objection to the currently filed claim 4, we feel that a specific means for moving the probe is not

clearly explained in the original specification of this case.

Accordingly, we would like to recommend you to delete the currently filed claim 4, at this stage.

(b) Regarding the objection to the currently filed claim 5, we would like to ask you to consider to amend the currently filed claim 5 by introducing therein a specific embodiment as shown in either one of Figs. 5 to 7.

(7) Therefore, please review the Office Action to this case and our comments and let us have your instructions thereabout by February 20, 2009 since the due date for responding to this Office Action has been set on March 2, 2009.

Please further note that this due date can be extended by one month by filing a petition for extending the response to this Office Action, with paying the extension fee.

And we can file this petition at most three times and thus we can totally extend this due date up to three months.

But no further extension is available with any reason.

Therefore, if we could not hear from you by February 20, 2009, we will file this petition to obtain one month extension so as to alive this patent application and next due date will be informed to you later.

拒絶理由通知書

特許出願の番号	特願2000-533782
起案日	平成20年11月21日
特許庁審査官	樋口 宗彦 9118 2W00
特許出願人代理人	斉藤 武彦(外 1名) 様
適用条文	第29条第1項、第29条第2項、第36条、第37条

この出願は、次の理由によって拒絶をすべきものです。これについて意見がありましたら、この通知書の発送の日から3か月以内に意見書を提出してください。

理 由

< 1 > この出願は、下記の点で特許法第37条に規定する要件を満たしていない。

記

下記の理由2に示すように、請求項1に係る発明には新規性がないので、請求項1～20に係る発明の間には、共通する「解決しようとする課題に対応した新規な事項」、又は、共通する「出願時まで未解決であった、その発明が解決しようとする技術上の課題」のいずれも定義することができない。

よって、請求項1に係る発明と他の請求項に係る発明とは特許法第37条第1、2号の何れの関係も有さない。

(注 「請求項に記載する事項の主要部」とは「解決しようとする課題に対応した新規な事項」であり、「解決しようとする課題」とは、「出願時まで未解決であった、その発明が解決しようとする技術上の課題」のことである点に注意されたい。詳細は、「特許・実用新案審査基準」の「出願の単一性の要件」を参照されたい。http://www.jpo.go.jp/shiryou/kijun/kijun2/pdf/tjki_jun_i-2-old.pdf f)

また、これら各発明が同条第3～5号の何れの関係も有さないことも明らかである。

なお、意見書を提出する場合には、該意見書において、どの請求項を特定発明とした場合に他の請求項は当該特定発明と特許法第37条各号のどの関係を何故満たしていると言えるのかについて説明されたい。

この出願は特許法第37条の規定に違反しているので、請求項2〜20に係る発明については単一性以外の要件についての審査を行わないこととなるが、請求項2〜5に係る発明は、請求項1に係る発明とまとめて審査を行うことが効率的であると判断したので、新規性、進歩性の要件についても審査を行った。

<2>この出願の下記の請求項に係る発明は、その出願前に日本国内又は外国において頒布された下記の特許に記載された発明であるから、特許法第29条第1項第3号に該当し、特許を受けることができない。

<3>この出願の下記の請求項に係る発明は、その出願前に日本国内又は外国において頒布された下記の特許に記載された発明に基いて、その出願前にその発明の属する技術の分野における通常の知識を有する者が容易に発明をすることができたものであるから、特許法第29条第2項の規定により特許を受けることができない。

記 (引用文献等については引用文献等一覧参照)

請求項1〜5／引用文献1／理由2, 3／

引用文献1には、

*多波長光源10、

*光ファイバ13, 18、

*ピンホール19、

*レンズなどの結像光学系21、

を備え、

*光源のスペクトルをZ方向に沿ったラインAB(22)上に波長毎に結像させ、その反射光をピンホール19に結像させ、

*該結像した反射光を光ファイバ18, 23を介して分散素子26に入射し、

*光電素子アレイ27に入射させてスペクトルを検出する

共焦点プローブと、

*プローブをZ方向及びこれに直交する方向を含む多方向に平行移動又は回転させる機構30

を備え、

*複数層の表面の反射率分布を同時に得る(特にp2 12, 13, 31-36行)

共焦点顕微鏡システムの発明(引用発明1)が記載されており、これと上記請求の範囲に係る本願発明との間に各別な相違点が認められない。

請求項1, 5／引用文献2／理由2, 3／

引用文献2には、共焦点顕微鏡システムに於いて光軸がずれた2色の光源ビー

ムを設け、対象表面に平行な方向にスペクトルを走査手段により走査しながら照射し、その反射光を分光して対象物のイメージを取得する共焦点顕微鏡の発明が記載されており、これと上記請求の範囲に係る本願発明との間に各別な相違点が認められない。

請求項1-5/引用文献3/理由2, 3/

引用文献3には、共焦点顕微鏡システムに於いて、光源光を光ファイバを介して伝送し、その出射点の発散光を結像レンズ、又はホログラフィック円筒レンズにより、光軸方向に平行な方向、又は直交する方向に延びる線状スペクトルとして対象物に照射し、その反射光を再び前記レンズ及び出射点、光ファイバを介して分光器に導き、分光されたスペクトルをアレイセンサで検出して対象物の画像を得る共焦点顕微鏡システムの発明（引用発明3）が記載されており、光ファイバのフレキシビリティからこれが対象物に対し任意の方向に走査して測定されることは自明である。

よって、上記請求の範囲に係る本願発明と引用発明3との間に各別な相違点が認められない。

引 用 文 献 等 一 覧

1. 仏国特許出願公開第2738343号明細書
2. 特表平5-509417号公報
3. 特開昭60-73405号公報

<4> この出願は、特許請求の範囲の記載が下記の点で、特許法第36条第6項第2号に規定する要件を満たしていない。

記

(1) 請求項4は機能的に記載されており、対応する装置発明としての構成が不明確である。例えば手動で動かすことを含むのか否か。

(2) 請求項5の「・・・前記手段」が請求項1の何れの手段を指すのか明確でない。

(3) 請求項5も「・・・移動するための手段」が機能的に記載されており、対応する装置発明としての構成が不明確である。例えば手動で動かすことを含むのか否か。

よって、請求項1-5に係る発明は明確でない。

<補正等に於ける注意事項・示唆>

(1) 明細書、特許請求の範囲を補正した場合は、補正により記載を変更した個所に下線を引くこと(特許法施行規則様式第13備考6)。その際、請求項の一部箇所が変更された請求項については、全文に下線を引くのではなく、対応するもとの請求項からの変更点のみ下線を引くようにされたい。

(2) 補正は、この出願の出願当初の明細書、特許請求の範囲又は図面に記載した事項のほか、出願当初の明細書、特許請求の範囲又は図面に記載した事項から自明な事項の範囲内で行わなければならない。補正の際には、意見書で、各補正事項について補正が適法なものである理由を、根拠となる出願当初の明細書等の記載箇所を明確に示したうえで主張されたい。(意見書の記載形式は、無効審判における訂正請求書の記載形式を参考にされたい。)

この拒絶理由通知書に関する問い合わせ先:

特許審査第一部物理分析 審査官 樋口宗彦

TEL 03-3581-1101 (内3292)

FAX 03-3592-8858 (事前に電話連絡のこと)

先行技術文献調査結果記録

・ 調査した技術分野

G01N21/00-21/61

PATOLIS

・ 先行技術文献

特になし

この先行技術文献調査結果の記録は、拒絶理由を構成するものではない。